

**CHAPTER NO. 357**

**SENATE BILL NO. 2285**

**By Kyle, Cooper**

**Substituted for: House Bill No. 2303**

**By McMillan, Mike Turner**

AN ACT to amend Tennessee Code Annotated, Sections 50-7-205(2), 50-7-403(a), (b), (f) and (j), and 50-7-503(a)(1), relative to unemployment insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-7-205(2), is amended by deleting the language in such subsection in its entirety and substituting instead the following new language:

Any employing unit which has been determined to be a successor of an employer pursuant to T.C.A. 50-7-403(b)(2);

SECTION 2. Tennessee Code Annotated, Section 50-7-403(a), is amended by inserting the language "and premium" between the language "such benefit" and the word "experience".

SECTION 3. Tennessee Code Annotated, Section 50-7-403(b)(1), is amended in the second sentence by inserting the language "and premium" between the language "the benefit" and the word "experience".

This subdivision is further amended by adding the following language after the second sentence in such subdivision:

Subdivision (A) shall apply to any employer whose individual account has been chargeable with benefits and subject to premiums throughout the thirty-six (36) consecutive calendar month period ending on the computation date as defined in T.C.A. 50-7-403(k)(1), and shall continue to apply until such employer has not had a payroll subject to premiums for nine (9) consecutive calendar quarters. Any other employer subject to premiums and chargeable with benefits shall be considered a new employer and be subject to the applicable new employer rate as provided in subdivision (B).

SECTION 4. Tennessee Code Annotated, Section 50-7-403(b)(1)(A), is amended in the first sentence by inserting the language "subject to this subdivision" between the language "The reserve ratio of each employer" and the language "shall be determined".

SECTION 5. Tennessee Code Annotated, Section 50-7-403(b)(1)(B), is amended in the first sentence of subdivision (i) by deleting the language "and notwithstanding the provisions of subsection (f),".

This subdivision is further amended in the next to last sentence by inserting the following new language between the language "chargeable with benefits" and the language "throughout the thirty-six (36)":

and subject to premiums

This subdivision is further amended by deleting the last sentence in such subdivision in its entirety.

SECTION 6. Tennessee Code Annotated, Section 50-7-403(b)(1)(B)(ii), is amended in the first sentence by deleting the language "and notwithstanding the provisions of subsection (f),".

This subdivision is further amended in the third sentence by changing the period (.) at the end of such sentence to a comma (,) and adding the following new language:

until such employer's individual account has been chargeable with benefits and subject to premiums throughout the thirty-six (36) consecutive calendar month period ending on the computation date.

This subdivision is further amended by deleting the fourth sentence in its entirety.

SECTION 7. Tennessee Code Annotated, Section 50-7-403(b), is amended by deleting subdivisions (2), (3), (4) and (5) in their entirety and substituting instead the following language as a new subdivision (2):

Mergers and Successorships. Effective for transfers made on or after January 1, 2006, premium and benefit experience, as provided in subsections (a) and (b)(1), shall only be transferred in accordance with the provisions of this subdivision.

(A)(i) In the event of a merger of employers or employing units and the resulting employer is a new entity, the combined taxable payroll, benefit and premium experience of the employers or employing units involved shall be computed as of the effective date of the merger to determine a new reserve ratio and premium rate applicable to the resulting employer.

(ii) In the event that any person or employing unit acquires or has acquired all or a distinct, severable, identifiable and segregable portion of the business of an employer and continues or has continued such acquired portion of the business of the predecessor, the successor shall be eligible to succeed to that part of the taxable payroll, benefit and premium experience of the predecessor which is attributable solely to that portion of the business which was acquired, provided:

(a) any and all of the predecessor employer's outstanding liabilities under this chapter are paid, and

(b) the parties have filed with the division of employment security a written agreement transferring the taxable payroll, benefit and premium experience, or portion thereof. Such agreement must be executed by all of the employers or employing units involved and must be notarized and filed during the calendar quarter in which the acquisition occurs or during the calendar quarter immediately following such quarter, and

(c) the administrator does not determine, pursuant to the factors in subdivision (F), that a substantial purpose of the transfer of trade or business was to obtain a reduced liability for premiums.

(B)(i) In the event that there is but one (1) transferring employer and the successor, at the time of such acquisition, is not already an employer, as defined in Section 50-7-205, the reserve ratio and premium rate applicable to the predecessor employer with respect to the period immediately preceding the date of the transfer applies to the successor employer for the calendar quarter in which the acquisition takes place and remains in effect until adjusted as provided in subsections (g) and (j). In the event that the successor, at the time of such acquisition, is an employing unit, as defined in Section 50-7-206, but not an employer, as defined in Section 50-7-205, such successor shall as of the first day of the calendar year during which the transfer is made become an employer under this chapter, and such successor's premium rate from January 1 of the year in which the acquisition takes place until the first day of the calendar quarter during which the acquisition takes place shall be the applicable new employer premium rate as provided in Section 50-7-403(b)(1)(B).

(ii) In the event that the successor is already an employer at the time of such acquisition, the reserve ratio applicable at the time of the acquisition to such successor employer shall continue to be applicable until the end of the rate year in which the succession occurs.

(iii) Commencing with the next premium rate year after an employer has transferred a distinct, severable, identifiable and segregable portion of the employer's business, the reserve ratio and premium rate of the predecessor employer shall be based on the portion of the taxable payroll, benefit and premium experience remaining to the credit of such predecessor employer after the transfer.

(C) Notwithstanding any other provision of law, the following shall apply regarding assignment of premium rates and transfers of benefit and premium experience of an employer's trade or business, or a portion thereof, to another employer if, at the time of the transfer, there is any common ownership, management or control of the two employers. In such cases the benefit and premium experience attributable to the transferred trade or business shall be transferred to the employer to whom such trade or business is so transferred. The reserve ratios and premium rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of the trade or business.

(i) For purposes of this section the term "trade or business" shall include the employer's workforce.

(ii) "Common ownership, management or control" includes any individual who has at least a 10% ownership interest in or participates in the management or control of the

predecessor's trade or business and who has a relative who has a 10% ownership interest in or participates in the management or control of the successor's trade or business. For purposes of this subdivision, "relative" means spouse, child, stepchild, adopted child, grandchild, son-in-law, daughter-in-law, parent, step-parent, parent-in-law, grandparent, brother, sister, half brother, half sister, step-brother, step-sister, brother-in-law, sister-in-law, aunt, uncle, nephew and niece.

(D) If, following a transfer of experience under subdivision (C), the administrator, pursuant to the factors in subdivision (F), determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability for premiums, the experience rating factors of the employers involved shall be combined into a single account and a single premium rate assigned to such account as of the date of the transfer.

(E) If a person or employing unit is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person or employing unit if the administrator, pursuant to the factors in subdivision (F), finds that such person or employing unit acquired the business solely or primarily for the purpose of obtaining a lower rate of premiums. Instead, such person or employing unit shall be assigned the applicable new employer rate under section 50-7-403(b)(1)(B).

(F) In determining whether a business was acquired, or a transfer of a trade or business, or portion thereof, was made solely or primarily or substantially for the purpose of obtaining a lower rate of premiums, the administrator shall use objective factors which may include the cost of acquiring the business, whether the person or employing unit continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(G) Enforcement. Any person or employing unit which knowingly violates or attempts to violate the provisions of this section or knowingly advises another person or employing unit to violate the provisions of this section shall be subject to the following penalties and punishments.

(i) Both the predecessor and successor employers:

(a) shall be assigned the applicable premium rate under the laws of this chapter and shall immediately owe the department the difference between the premiums determined by the applicable premium rate and the premiums actually paid plus any interest due as provided in T.C.A. 50-7-404(a), and

(b) shall pay, in addition to their applicable premium rate, a penalty rate of 2% of the taxable payroll for each quarter beginning on the date of the infraction and continuing throughout the three premium rate years following the first July 1 after the date on which the department made the determination of the infraction. Revenue from such penalty rate shall be deposited into the unemployment compensation special administrative fund established under T.C.A. 50-7-503 and shall not be included in the determination of an employer's reserve ratio as provided in Section 50-7-403(b)(1)(A).

(ii) Any person found in violation of this section against whom the penalties as set forth in subdivision (i) are not enforceable is subject to a civil money penalty of not more than \$50,000. In making such assessment, the administrator shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person or employing unit charged, the gravity of the violation, the good faith of the person or employing unit, and the person or employing unit's history of previous violations. Any such penalty shall be deposited in the unemployment compensation special administrative fund established under T.C.A. 50-7-503.

(iii) In addition to the penalties imposed by subdivisions (i) and (ii), any violation of this subsection may be prosecuted as a Class A misdemeanor under Title 40, Chapter 35.

(H) For purposes of this subsection:

(i) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(ii) "Violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(iii) "Person" has the meaning given such term by Section 7701(a)(1) of the Internal Revenue Code of 1986.

(I) The administrator shall establish procedures to identify the transfer or acquisition of a business for purposes of this subdivision (2).

(J) Subdivision (2) shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

(K) As provided in § 62-43-113(b)(2)(A)(ii)(b) of the Tennessee Employee Leasing Act, a staff leasing company shall not be considered a successor employer, within the meaning of this section, to any client and shall not acquire the experience history of any client with whom there is not any common ownership, management or control. The client, upon terminating its relationship with the staff leasing company, shall not be considered a successor employer, within the meaning of this chapter, to the staff leasing company and shall not acquire any portion of the experience history of the aggregate reserve account of the staff leasing company with whom there is not any common ownership, management or control.

(L) Nothing in this section shall be construed to authorize or require the refund of any sums lawfully paid into the unemployment compensation fund created by Acts 1936 (1st E.S.), ch. 1, § 9(a), as amended [repealed], and by Acts 1947, ch. 29, § 9(a), as amended, § 6901.9(A) of the Code Supplement of 1950 or by § 50-7-501(a).

SECTION 8. Tennessee Code Annotated, Section 50-7-403(f), is amended by deleting the first sentence in such subsection in its entirety.

SECTION 9. Tennessee Code Annotated, Section 50-7-403(j)(1), is amended by deleting the language "under the provisions of subsection (f)" at the end of the last sentence and substituting instead the language "under the provisions of subdivision (b)(1) for a premium rate based on the provisions of subdivision (b)(1)(A)".


SECTION 10. Tennessee Code Annotated, Section 50-7-503(a)(1), is amended by deleting the period at the end of such subdivision and substituting instead the following new language:

, including the penalty rate payments collected under T.C.A. 50-7-403(b)(2)(G)(i)(b) and the civil money penalties collected under T.C.A. 50-7-403(b)(2)(G)(ii).

SECTION 11. This Act shall take effect January 1, 2006, the public welfare requiring it.

**PASSED: May 19, 2005**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 7<sup>th</sup> day of June 2005**

  
PHIL BREDESEN, GOVERNOR